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ABSTRACT

Addressed to school board members, this article attempts to summarize requirements of the Americans with Disabilities Act (ADA) and its implications for school districts. It warns against hasty purchase of private compliance assistance; then provides an overview of each of the Act's five Titles which address employment practices, activities involving public contact, public accommodations, telecommunications companies, and miscellaneous provisions, respectively. Also discussed are liabilities under the ADA, requirements concerning hiring school personnel, and the Act's definitions of critical terms including: "physical or mental impairment," "major life activity," "record of impairment," "regarded as impaired," "qualified individual," and "essential function." In the "Tips 'n Techniques" section, eight benefits are listed for school districts enlisting senior citizen volunteers. The top 10 regional policy issues in each region and the top 20 policy issues throughout the United States and Canada are listed. (DB)

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Updating SCHOOL BOARD POLICIES

Volume 23/Number 4/May 1992

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Americans with Disabilities Act

The first of two articles

A great deal has been written and said about the Americans with Disabilities Act and its implications for schools and school boards. Unfortunately, much of what has gone before has been presented in government-eze or legal-eze. Now, thanks to the Iowa Association of School Boards, we are able to provide you with a clear and concise explanation of what the Act means and how it applies to your school district.

We are grateful to Mr. T.E. Davidson, Executive Director of the Iowa Association of School Boards and the association's legal and policy staff for the following special report.

The Americans With Disabilities Act (the ADA) can best be understood as an extension of the Rehabilitation Act of 1973 to the private sector and to those governmental bodies that receive no federal financial assistance. Most school districts have been subject to the Rehabilitation Act since its passage in 1973 because virtually every school district receives some federal financial assistance, either directly or indirectly. So, for school districts the ADA does not represent a major change in the law. In general, if a school district has been in compliance with Section 504 of the Rehabilitation Act of 1973, then it probably will not have to do a lot to come into compliance with the ADA.

In addition, school districts also have been subject to regulation under the disability discrimination provisions of their own state Civil Rights Acts. The basic requirements of those acts are similar to the requirements of the ADA with regard to the employment provisions. School districts that are in compliance with their Civil Rights Acts are more likely to be in compliance with the ADA.

Advice: the reliable and the unreliable

To assist in understanding the new regulations, the Equal Employment Opportunity Commission has published a helpful booklet, entitled "The Americans With Disabilities Act: Your Responsibilities As An Employer" (EEOC-BK-17, 1991), that explains the relationship between the ADA and the Rehabilitation Act of 1973. This is reliable advice.

Unfortunately, there has been some unreliable advice, coming from panic in the private sector where these laws and regulations have not applied. In some instances, that undue concern has been spread to school districts. School districts should be especially wary of any individual or organization that suggests major changes are required by ADA or that uses any kind of scare tactic to sell their advising or consulting services.

For those districts that determine that they need compliance assistance that goes beyond the available free or low cost services, we strongly recommend that the district carefully perform a background check of the potential service provider to determine that the provider has actual experience conducting compliance audits under either Section 503 or Section 504 of The Rehabilitation Act of 1973. Simply put, it is critical that school districts understand the nature and extent of their legal obligation under the ADA before they make any changes or financial commitments.

ADA overview

The ADA consists of five titles. With the possible exception of Title IV, which applies to telecommunications companies, each title of the Act impacts to some degree on school districts. The following overview is meant to provide you with a synopsis of ADA.

- Title I regulates the employment practices of all covered employers. School districts are covered employers. From now until July 26, 1992, school districts will be governed by the regulations under Section 504 of the Rehabilitation Act which are already in effect. Thereafter, school districts will be governed by the regulations under Title I.
- Title II took effect on January 26, 1992, and applies to all services, programs and activities provided or made available by public entities. School districts are public entities under Title II. All governmental activities are covered by Title II even if they are carried out by contractors.

  Title II includes those activities involving general public contact

continued on page 2

Inside Updating. . .

Community Report Cards ..... **p. 4**
Tips 'n Techniques ..... **p. 5**
Older Volunteers in School
Policy Adviser ..... **p. 8**
Top Policy Issues

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Americans with Disabilities Act from page 1

as part of ongoing operations of the public entity (telephone contacts, office walk-ins, interviews, etc.) and those directly administered by the entity for program beneficiaries and participants. For schools that means, for example, classroom instruction, bus transportation, or participation in extracurricular activities.

Title II also includes employment. This area is simplified somewhat by Department of Justice regulations that provide that the EEOC regulations under Title I will be applied as the governing regulations. Consequently, there are no separate employment regulations under Title II.

- Title III also took effect on January 26, 1992, and it deals with public accommodations. Title III applies only to private entities, not to governmental bodies. It does not apply to school districts. However, as you might suspect, there is a "but..." Public entities will sometimes be obliged to ensure that private entities operate facilities/services in compliance with Title II.

  The Department of Justice has published a Technical Assistance Manual which provides guidance concerning compliance with the regulations issued under Title III and addresses the relationship between Title II and Title III. For example, if a school district owns a football stadium and enters into an agreement with a private business to provide food services at the stadium, then the district must ensure by contract that the food service is operated in a manner which complies with Title II. That is, the services offered must not discriminate against individuals with disabilities with regard to the goods, services, facilities, privileges, advantages or accommodations which they provide.

- Title IV applies only to telecommunication companies, and it requires those companies to provide telecommunications relay services for individuals with hearing or speech disabilities not later than July 26, 1993.

- Title V contains miscellaneous provisions including the relationship of the ADA to other laws (the highest standard applies whether that standard is the ADA, Section 504 of the Rehabilitation Act, a state law or a local ordinance), a provision prohibiting retaliation against individuals who seek action in accordance with the ADA, a provision authorizing the court to award attorney fees to the prevailing party, and provisions relating to current illegal drug use, compulsive gambling and other excluded disabilities.

Damages under the ADA

Remedies under the ADA were originally limited to the same sort of "make whole" relief that is provided under Title VII of the Civil Rights Act of 1964. That includes hiring, reinstatement, back pay, and injunctive relief. However, the ADA was amended by the Civil Rights Act of 1991, and the relief provisions of the ADA now have been expanded to include both compensatory damages (future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses) subject to a specific dollar limitation and punitive damages. (Punitive damages may not be awarded against a governmental body.)

Hiring School Personnel under the ADA

The portions of the ADA that concern employment are particularly interesting and important to school boards. While your superintendent is probably the person who makes the majority of hiring decisions in your district, the school board is the ultimate employer of all district employees. This fact makes you responsible and accountable for hiring practices.

For that reason, and because you do not want to be involved in every employment decision, your board needs clear hiring policies. In order to assure that your present policies reflect the ADA requirements, a review of the key employment provisions of the law is presented here.

Title I of the ADA prohibits discrimination against qualified individuals with a disability with regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.

The key terms in this portion of the law are "disability" and "qualified individual". The term "disability" means:

- a physical or mental impairment that substantially limits one or more of the major life activities of an individual; or
- a record of such impairment; or
- being regarded as having such an impairment.

The Terms: Physical or mental impairment

The first definition of disability contains three separate components which are

continued on page 3

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Americans with Disabilities Act from page 2

further defined in the regulations. "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting any of the following body systems: neurological; musculo-skeletal; special sense organs; respiratory or speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine. And it also includes any mental or psychological disorder.

Examples of impairments that are included in the definition are: visual, speech, and hearing impairments; cerebral palsy; muscular dystrophy; multiple sclerosis; HIV infection; cancer; heart disease; diabetes; mental retardation; emotional illness; drug addiction; alcoholism; and dyslexia. Not included are such things as height, weight, or muscle tone within "normal ranges" that are not the result of a physiological disorder; eye or hair color; left-handedness; pregnancy; poverty; lack of education; or a prison record.

The determination of whether a person has a protected disability must be made without regard to mitigating measures such as medication (e.g. convulsive medication for an epileptic) or assistive or prosthetic devices (e.g. hearing aids, crutches, or artificial limbs).

The Terms: Major life activity

The term "major life activity" means activities that an average person can perform with little or no difficulty such as sitting, standing, walking, lifting, reaching, seeing, speaking, breathing, or learning.

In determining whether a disability substantially limits these major life activities, the EEOC regulations focus upon three factors: the nature and severity of the impairment, its duration or expected duration, and the actual or expected permanent or long-term impact resulting from it. In every case, the analysis must be directed to the effect of the disability upon the specific individual affected by it.

The EEOC has published a Technical Assistance Manual which provides guidance to employers on compliance with the EEOC's Title I regulations. The Manual states that questions regarding temporary impairments are answered by looking at the extent, duration, and impact of the impairment and gives the following examples:

Broken limbs, sprains, concussions, appendicitis, common colds or influenza generally would not be disabilities. A broken leg that heals normally within a few months would not be a disability under the ADA. However, if a broken leg took significantly longer than the normal healing period to heal, and during this period of time the individual could not walk, the individual would be considered to have a disability. Or if the leg did not heal properly, and resulted in permanent impairment that significantly restricted walking or other major life activities, the individual would be considered to have a disability.

The Terms: Record of impairment

Individuals also can be classified as having a disability if they have a record of physical or mental impairment that substantially limits a major life activity, such as record of cancer or heart disease for which the individual no longer receives treatment, a history of mental illness, a misdiagnosis of mental illness, or a record of past drug or alcohol addiction, provided the person has been successfully rehabilitated.

The Terms: Regarded as impaired

Finally, if a person is regarded as having a disabling impairment, then that person also would be classified as an individual with a disability. This portion of the definition is intended to protect those individuals who are not, in fact, physically or mentally impaired but who are regarded as impaired as a result of myth, fear, or stereotype. The EEOC notes that this portion of the definition includes unsubstantiated concerns about productivity, safety, insurance, liability, attendance, costs of accommodation, accessibility, workers' compensation costs or acceptance by co-workers and customers.

Who is a "qualified individual?" What is an "essential function?"

The protections of the ADA are extended only to those individuals who are otherwise qualified for the employment position in question. An otherwise "qualified individual" is one who, with or without reasonable accommodation, can perform the essential functions of the job.

The term "essential functions" of the job means the fundamental duties of the employment position and does not include the marginal duties. The EEOC regulations state that a job function may be considered essential for any of several reasons including, but not limited to, the following:

- the position's function;
- specialized nature of the position that would limit the number of employees who could perform the function or provide the reason for hiring a specially trained person;
- amount of time required to perform the function;
- terms of a collective bargaining agreement;
- consequences of not requiring the incumbent to perform the function;
- work experience of past incumbents; and
- current work experience of incumbents of similar jobs.

The consequence of the incumbent not performing the function is illustrated by the following examples: a teacher aide who works with severely handicapped students must be able to lift or restrain them even though this may be an infrequent occurrence, and a secretary who is the only person available to answer the telephone must be able to do so.

With regard to an employer's judgment, the EEOC states that an employer may establish a standard such as typing accurately at the rate of 75 words per minute without proving that this rate and degree of accuracy are essential as long as this standard is uniformly applied to

continued on page 4

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Americans with Disabilities Act from page 3

all employees and was not established for the purpose of excluding individuals with disabilities.

For purposes of Title I relating to employment, consideration will be given by the EEOC to the employer's judgment as to what functions of a job are essential and, if an employer has prepared a written job description before advertising or interviewing applicants for the job, then this description will be considered evidence of the essential functions of the job.

Job descriptions must be prepared in advance of any alleged discriminatory action or they will not be considered. They must accurately reflect what the employee is actually required to do, not what they have been required to do historically or what they may be required to do but have not actually done. And it is critical to understand that the EEOC states that "the employer should focus on the purpose of the function and the result to be accomplished, rather than the manner in which the function presently is performed." Thus, the essential function of a computer operator is the access, input, and retrieval of information from the computer. It is not essential that this function be performed manually or visually, and the EEOC notes that adaptive devices and special software are available that would accommodate a qualified individual with a disability in performing these tasks.

Once the essential functions of the job have been established, the analysis shifts to the ability of the individual to perform those functions, with or without reasonable accommodation. The concept of reasonable accommodation applies to the application and hiring process, to the performance of the job, and to the enjoyment of the benefits and privileges of employment.

Reasonable accommodation and other things

In the next issue of *Updating*, we will take a look at other key elements of the ADA, including reasonable accommodations and provisions concerning accessibility, along with some recommendations for interviewing and hiring procedures and plans for transition. ■

Report Cards for Communities

Ernest Boyer, president of the Carnegie Foundation for the Advancement of Teaching, has suggested that, in addition to report cards for students and schools, we should develop them for our communities. Since education is,or should be, a community undertaking, we need to know how well we are doing in providing an environment that allows learning and positive development. The areas that might be graded include:

Health: How many of the community's mothers have access to/know about prenatal care? How many low birthrate babies are born in the community? How many children receive the necessary immunizations? How does the community link health and education in its nutrition and health care efforts?

Parents: Do our parents read to their children? Are there literacy programs for parents who cannot read? Do schools and/or PTAs offer preschool parent education programs? Are there support groups for parents with a variety of problems/concerns?

Preschool: What percentage of eligible children are in Head Start programs? Are there preschool programs available for all three- and four-year-olds? Are Head Start programs and community schools working together to ensure continuity in learning? Are there adequate child care facilities? Is there a quality control system for child care facilities? Does the local community college offer a degree program for preschool professionals?

Workplace: Do businesses provide parental leave? Are flexible scheduling and job sharing possible? Do employers offer employees "parenting days" each year for school and doctor appointments? Do businesses offer on-site child care or assist employees in finding good child care?

Television: Do local television stations show programs for preschoolers and parents? Are there community groups that monitor local programming? Do local libraries and video stores offer good videos for preschoolers?

Neighborhoods: Are there parks and indoor recreation centers with activities for young children? Are libraries, museums, and recreation facilities adequately funded? Do these facilities offer ready-to-learn programs? Are high school and college students encouraged to serve as volunteers in community programs?

Generations: Do schools, day-care centers, and retirement homes bring young and old together? Are there "grandteacher" programs in which older citizens can serve as mentors to youngsters? What kinds of intergenerational activities are available in the community?

School board members can and should be leaders in improving the grades on their communities' report cards. Within each community, local school board members serve as the leading advocates on behalf of students and the public schools, thereby advancing the community's vision for its schools and energizing the community to support systemic change. In fulfilling its advocacy responsibilities, the visionary school board collaborates with families, community organizations, and other public and private agencies for the benefit of the whole child and of the community in which they live. ■

Tips 'n Techniques

Senior citizens can increase your schools' capabilities

We are a partnership or nothing.
– Woodrow Wilson, 1919

We are a community. Our individual Fates are linked; our futures intertwined; and if we act...together... "We can move mountains."
– Jimmy Carter, 1978

Two long- and firmly-held concepts concerning education continue to underlie public schooling in the United States: first, that education is the best means for achieving individual success; and second, that an educated citizenry is necessary to preserve our liberty, ensure our national economic prosperity, and enrich the lives of all of our people.

Added to those beliefs is the current notion that our public schools can and should be the central institution in coping with the wide array of social problems confronting the nation. Proponents of this theory say that, through access to the children and families of communities across the country, schools are the ideal vehicle for addressing these problems and coalescing the resources to solve them.

Educators and education policymakers long have been leaders in collaborating with others to advance the welfare and opportunities for achievement for all citizens. Often, however, our collaborative efforts have overlooked a potentially vital resource within our communities — our older citizens.

Older Americans made up 12.6 percent of our population in 1990, and this percentage is growing as our population ages. Those over 65 years of age now outnumber teenagers in the United States. The experiences and skills of these older citizens are needed in the best of times, and certainly we should not waste them in the present times of declining resources and increasing needs.

In addition to the expertise that older citizens can bring to our schools and students, there is the practical value of increasing support for the public schools through their inclusion. Demographic studies have shown that voters 62 years of age and up tend not to support tax increases for the schools. With no children in neighborhood schools and no contact with the school system, it is not surprising that older voters would rather see their tax dollars invested in roads, Medicare, or crime control.

When directly involved in mentoring children and working in and for their local schools, however, these same older voters become strong advocates for public education. In a Michigan program that includes older volunteers in its schools, 85 percent of those volunteering said they understood the schools and the teachers better as a result of their work, as compared with 31.7 percent of older non-volunteers. In Dade County (Florida) Public Schools, where older volunteers are very active, 72 percent of the senior citizens have voted to support recent school bond referenda. (*Bridging the Gap: Involving Older Volunteers in the Public Schools*, National School Boards Association, 1991.)

Benefits for school districts and for students

At a time when schools are being asked to do more and more, often with less and less, older volunteer can be an invaluable resource. They can:

- provide support and relief for teachers;
- help students to perform better through personal attention and mentoring;
- build closer ties with the community-at-large;
- make the extra effort needed by students-at-risk;
- demonstrate the connection between the classroom and the world outside school;
- allow more time for teachers to do planning, conduct research, and work with individual students;
- build bridges between the young and the old, helping both generations to understand and learn from each other; and
- offer positive adult role models for students.

Continued on page 6

Tips 'n Techniques

from page 5

Additionally, students who spend time with older volunteers find that they — the students— have something to offer in return, i.e., friendship and appreciation of another person. This reciprocal relationship can be an important element in building self-esteem for both parties.

Do you need volunteers in your schools?

Any program that is to succeed needs to be planned. The first step in planning is to determine the need. Your teachers and school staffs are the logical people to ask about those needs and how volunteers could help in meeting them. Some questions to ask are:

1. Are there needs, in the classrooms and/or in the schools, that are currently unmet?
2. What are those needs? Be specific.
3. Could volunteers help in fulfilling the needs, or is additional professional staff needed? In the latter case, what about volunteers who are retired professional educators?
4. How many volunteers are needed? Is your community's resource pool big enough to make a difference?

If you determine that there are needs that could be met by using volunteers, be sure to include them in the subsequent planning stages.

Policies for school volunteers

Most school districts have policies concerning school volunteers. These may or may not need to be revised in regard to older volunteers. You will want to review your policies and might consider the following policy issues raised by *Bridging the Gap.*

Recruitment Policies

- What are the methods that will be used for recruiting volunteers? Are these methods the ones that are likely to reach older volunteers. Parent newsletters, for example, are not likely to reach the attention of older citizens.
- Does the volunteer recruitment program make special efforts to recruit volunteers from all racial/ethnic groups and cultures?
- Does the district have a regular method of assessing school needs and volunteer interests, expertise and skills to ensure that volunteers are being recruited for jobs that are of the greatest priority in meeting student needs?
- Will volunteers be screened? Who will conduct the screenings?

Supervision Policies

- A volunteer works under the direction and supervision of a teacher or member of the school staff.
- A volunteer will not be expected to assume the responsibilities of instruction in the classroom.
- The professional staff of the school will assume the responsibility for implementing school regulations relative to student behavior, for grading, and for maintaining cumulative records and other confidential information.

Health Policies

State law may require volunteers who come in regular contact with students to submit certification that s/he is free from tuberculosis and/or other communicable diseases.

You may want to require proof of either a TB skin test or chest x-ray and/or a doctor's statement of medical examination.

Insurance Policies

School policies should clearly state the extent to which volunteers may be covered by the school district's insurance policies. A sample policy, taken from the Santa Barbara, California, High School District states:

> Any volunteer will not be an employee during volunteer services to the district, and will serve without compensation of any type or other benefits accorded employees of the district, except that such a volunteer, while engaged in the performance of volunteer services under the direction and control of the Board of Education will be deemed eligible for (a) Workers' Compensation Insurance benefits, and (b) insurance coverage for combined comprehensive bodily injury and property damage liability.

Kinds of Volunteer Services Policies

School policies should clearly state the kinds of services that volunteers may perform. Policy should also spell out that volunteers will supplement the educational program, not replace salaried employees. The service of volunteers polices in West Chester, Pennsylvania, School District states:

> While volunteers will not be asked to assume the professional responsibilities of the school staff, they will work under the direction of staff members requesting their help in activities which are supportive, reinforcing, or enriching in nature.

About volunteers

There are organizations that will provide additional information about

continued on page 7

Tips 'n Techniques

from page 7

school volunteer and partnership programs. Listed here are three national associations that can provide planning information and advice:

- American Association of Retired Persons
  1909 K Street, N.W.
  Washington, D.C. 20049
  (202) 434-2277

- Retired Senior Volunteer Program (RSVP), ACTION
  1100 Vermont Avenue, N.W., Room 6100
  Washington, D.C. 20525
  (202) 634-9353

- National Association of Partners in Education (NAPE)
  209 Madison Street, Suite 401
  Alexandria, VA 22314
  (703) 836-4880

And what do the kids say?

Whatever benefits your school district might reap from involving older volunteers in your schools, be they economic or social, practical or personal, one incalculable advantage is stated for us by an Indiana third grader speaking about grandparents in schools:

> They don't have to be smart, only answer questions like "How come we can't see God?" and "Where does the wind come from?" When they read to us, they don't skip or mind if it is the same story again. Everybody should try to have one, especially if they don't have a television, because grandmothers and grandfathers are the only grown-ups who have got time.

■

Policy Adviser

from page 6

The Top Ten Regional Policy Issues

Northeast

1. Elected/Appointed Boards
2. Sexual Harrassment
3. School Board Member Training
4. Superintendent Evaluation
5. Site-Based Management
6. School Bond Referenda
7. Parental Involvement
8. Year-Round Education
9. Choice/Open Enrollment
10. Funding Formulas

Central

1. Elected/Appointed Boards
2. Site-Based Managment
3. Board Self-Evaluation
4. Parental Involvement
5. Search and Seizure
6. Superintendent Evaluation
7. Day Care Programs
8. Year-Round Education
9. Liability Insurance
10. Sexual Harrassment

South

1. Elected/Appointed Boards
2. Sexual Harrassment
3. Code of Ethics
4. Superintendent Search
5. Superintendent Evaluation
6. School Desegregation
7. Technology in Schools
8. Copyrights
9. Student Board Members
10. Board Member Training

West

1. Year-Round Education
2. Board Self-Evaluation
3. Choice/Open Enrollment
4. Site-Based Management
5. Sexual Harrassment
6. Search and Seizure
7. Superintendent Search
8. Board Member Training
9. Code of Ethics
10. Art Education

Pacific

1. Teachers' Salaries
2. Strike Negotiations
3. Staff Development Training
4. Funding Formulas
5. Search and Seizure
6. Space per Pupil/Class Size
7. Curriculum Evaluation
8. Year-Round Education
9. Site-Based Management
10. Student Board Members

Canada

1. Public Use of School Facilities
2. Superintendent Search
3. Board Self-Evaluation
4. Code of Ethics
5. Hunting Field Trips
6. Challenges to Health Curriculum
7. Pregnant Students
8. School Renovation
9. Purchasing Procedures
10. Staff Assignments/Transfers

Policy Adviser

This monthly column usually considers an issue raised by a specific question or questions addressed to NSBA's National Education Policy Network (NEPN) by school board members and/or superintendents. During the past eight months, the *Updating* editorial staff has been reviewing the issues that are most prevelant in school districts, based on the requests for policies and information received by NEPN and NSBA's Policy Information Clearinghouse.

We thought you would like to see what those issues are, nationally and regionally. This month's Policy Adviser takes a look at current policy issues across the United States and Canada. You will notice that the issue of HIV/AIDS education is missing from these lists. That is because NSBA's HIV/AIDS Clearinghouse handles questions and requests for information separately from NEPN and, therefore, these are not reflected in our data.

As you consider the following listings, we would be interested in hearing from you about how our information compares with the issues being considered by your school board.

Top Twenty Policy Issues

Throughout the United States and Canada

1. Elected versus Appointed School Boards
2. Sexual Harrassment
3. Site-Based Management
4. Choice/Open Enrollment
5. Superintendent Evaluation
6. Board Self-Evaluation
7. Year-Round Education/Extended School Year
8. Parental Involvement
9. School Board Member Training
10. Funding Formulas
11. Code of Ethics
12. Superintendent Search
13. Search and Seizure
14. Staff Development Training
15. Strike Negotiations
16. Teachers' Salaries
17. Student School Board Members
18. School Bond Referenda
19. Arts Education
20. Day Care Programs (for parenting students)

continued on page 7

For more policy help

Sample policies and regulations relating to topics covered in this month's *Updating* are included in the school administrator's copy of this publication. These are:

Americans with Disabilities Act: AC, Nondiscrimination/Equal Opportunity; ACE, Nondiscrimination on the Basis of Handicap/Disability; GBA, Open Hiring/Equal Employment Opportunity and Affirmative Action; GBGA, Staff Health.

Older Volunteers: IJOC, School Volunteers.

Additional sample policies, regulations, and exhibits on these and other topics may be requested from the NEPN Policy Information Clearinghouse, NSBA, 1680 Duke Street, Alexandria, Virginia 22314 or from your state school boards association.

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